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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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FORD GLOBAL TECHNOLOGIES, LLC.
FAIRLANE PLAZA SOUTH, SUITE 800
330 TOWN CENTER DRIVE
DEARBORN, MI 48126

EXAMINER

LUONG, VINH

ART UNIT PAPER NUMBER

3682

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,828

Applicant(s)

SCHWERDT ET AL.

Examiner

Vinh T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Attachment.

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because of: (a) the implied phrase, such as, "[t]he invention also relates to ...;" and (b) the legal phraseology "said" and "means." Correction is required. See MPEP § 608.01(b).

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features, such as, the vehicle in claim 8 and two A-pillars in claim 10 must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. Claims 4 and 8-12 are objected to because of the following informalities: (a) claim 4 contains typographical error, e.g., “triangule” should have been changed to “triangle”; and (b) no antecedent basis is seen for the term “it” in claims 8 and 12. Appropriate correction is required.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 4, 10, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether:

(a) The term that appears at least twice, e.g., “a pivot axis for said pedal arm” in claim 11/8 refers to the same or different things. See double inclusion in MPEP 2173.05(o); and

(b) A confusing variety of terms, such as, “a support for a dashboard” and “a

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support for components” in claim 12/8 refers to the same or different things. See MPEP 608.01(o). Applicant is respectfully urged to identify each claimed element with reference to the drawings.

The terms, such as, “small” and “generally” in claim 2, “general” in claim 4, and “sufficiently” in claim 12 are relative terms, which render the claims indefinite. The terms “small” and “generally” in claim 2, “general” in claim 4, and “sufficiently” in claim 12 are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For example, in claim 12, it is unclear what dimension of the height of the beam structure is required so that the beam structure is considered to be sufficiently low.

It is unclear whether claim 4 recites a Markush group or not. If claim 4 recites the Markush group, the instant Markush group is improper because it does not use the closed term “consisting of.” MPEP 2173.05(h) citing *Ex parte Dotter*, 12 USPQ 382 (Bd. App. 1931).

The meaning of the term “two A-pillars” in claim 10 is unclear since the A-pillars are not illustrated in the drawings.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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9. Claims 1, 3, 5-9, and 11, and claims 2, 10, and 12, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Tomono et al. (US Patent No. 6,539,823 B1 filed on November 27, 2000).

Regarding claim 1, Tomono teaches a pedal arrangement for a vehicle, comprising:

at least one pedal bracket 2, 5 adapted to be fixedly mounted in said vehicle and defining a pivot axis 9;

a pedal arm 8 supported by the at least one pedal bracket 2, 5 for pivoting movement about the pivot axis 9; and

a stop element 8b mounted on said pedal arm 8 in an orientation such that said stop element 8b faces rearwardly with respect to said vehicle and, in the event of a collision, said stop element 8b comes into contact with an existing beam structure 5b (Fig. 2, 5) extending generally transversally in said vehicle. *Ibid.* column 6, line 66+.

Regarding claim 2, said stop element 8b is mounted on said pedal arm 8 so as to be positioned a *small* distance in front of the beam structure 5b and at *generally* the same height as said beam structure 5b.

Regarding claim 3, said stop element 8b comprises an attachment section (i.e., the base of the stopper 8b. See Attachment, hereinafter "Att.") arranged to be attached to the pedal arm 8, and a stopper section (i.e., the top of the stopper 8b. See Att.) arranged to come into contact with said beam structure 5b.

Regarding claim 5, the at least one pedal bracket structure 2, 5 comprises a weakened section 5a (Fig. 3) allowing the at least one pedal bracket structure 2, 5 to be deformed upon impact so that the pivot axis 9 is allowed to be displaced. *Ibid.* column 5, line 23+.

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Regarding claim 6, said weakened section 5a comprises at least one recess 5a in said at least one pedal bracket structure 2, 5.

Regarding claim 7, said pedal arrangement comprises a brake pedal arrangement. *Ibid.* abstract.

Regarding claim 8, Tomono teaches a vehicle (i.e., an automobile. See column 1, line 6+) comprising a structural beam structure 5b extending generally transverse in the vehicle and serving as a support for components in the vehicle, a pedal arrangement comprising a pedal arm 8 pivotally supported by a pedal bracket structure 2, 5 which defines a pivot axis 9 for said pedal arm 8 and which is adapted to be fixedly mounted in said vehicle, and a stop element 8b mounted on said pedal arm 8 so that it faces rearwardly with respect to said vehicle, said stop element 8b being mounted on the pedal arm 8 at a position in front of said beam structure 5b which is chosen so that, in the event of a collision, said stop element 8b comes into contact with said beam structure 5b to inhibit the brake pedal arm 8 from moving rearwardly in said vehicle.

Regarding claim 9, Tomono's vehicle further comprises a firewall 1 to which said pedal bracket structure 2, 5 is mounted.

Regarding claim 10, said beam structure 5b extends between two A-pillars 5 (Fig. 2) positioned adjacent opposite sides of said vehicle.

Regarding claim 11, said pedal bracket structure 2, 5 defines a pivot axis 9 for said pedal arm 8 which is located higher than said beam structure 5b (Fig. 1).

Regarding claim 12, said beam structure 5b is arranged at a height which is *sufficiently* low for it to serve as a support for a dashboard 1 *operatively* resting on said beam structure 5b.

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10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 4, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Tomono et al.

Tomono teaches the invention substantially as claimed. However, Tomono's stopper section is formed in a general I-shape instead of a V-shape, a U-shape, a triangle, a rectangle, or a square.

It would have been obvious to one having ordinary skill in the art to change the general I-shape of Tomono's stopper section to a V-shape, a U-shape, a triangle, a rectangle, or a square in order to prevent a load of vehicle collision applied to the knee of the driver. See column 3, lines 26-40. The shape of the stopper section would have been an obvious choice in design because the claimed structure and the function it performs are the same as the prior art. *In re Chu*, 66 F.3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995) citing *In re Gal*, 980 F.2d 717, 719, 25

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USPQ2d 1076, 1078 (Fed. Cir. 1992). See also legal precedents regarding change in shape in MPEP 2144.04.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Nebuya et al. (stop element 50 in Figs. 1 and 2), Kawai (stop element 18), Burgstaler et al. (beam 7), and Jagger et al. (beam 20).


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong

December 4, 2006



Vinh T. Luong
Primary Examiner

ATTACHMENT

Fig. 1

